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**DECISION**



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

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FILE: B-193746

DATE: January 26, 1979

MATTER OF: Elm State Electronics, Inc.

DLG-00750

DIGEST:

Protest filed more than ten days after protester learns of initial adverse agency action on protest filed with agency is untimely and not for consideration.

(Protest) Elm State Electronics, Inc. (Elm), protests the inclusion in National Security Agency contract No. AGCOW192 MDA 90478C631 of a provision requiring the contractor to obtain certain transistors from a sole source. Elm alleges that this sole source provision deprives it of the opportunity to supply parts to the successful bidder and that it is qualified to supply these parts.

The record discloses that Elm, through its Senator, protested to the agency by letter of September 20, 1978. By letter dated October 19, the Senator forwarded to Elm the agency's response justifying sole source provision. Elm responded to the Senator, disagreeing with the agency's position. By letter of November 20, the Senator informed Elm that the agency had reaffirmed its position. Elm then protested here on December 18.

Our Bid Protest Procedures require that when a protest is filed with an agency, any subsequent protest to this Office must be filed "within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action." 4 C.F.R. § 20.2(a) (1978). Clearly, Elm did not comply with this requirement; thus, the protest is untimely and not for consideration.

The record indicates that Elm was advised of its right to file a protest with this Office by a congressional source in a letter dated December 5, and we

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recognize that prior to Elm's receipt of that letter, it may have been unaware of that right. However, a firm's right to protest, and the rules applicable thereto, are set forth in our Bid Protest Procedures, which are set forth in 4 C.F.R. Part 20 and which were published in the Federal Register at 40 Fed. Reg. 17979 (1975). Under the law, we must regard that publication as placing Elm on constructive notice of the Procedures. DeWitt Transfer and Storage Company, 53 Comp. Gen. 533 (1974), 74-1 CPD 47; Twyco, Inc.--Request for Reconsideration, B-185126, December 23, 1975, 75-2 CPD 408.

The protest is dismissed.



Milton J. Socolar  
General Counsel